

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL BABECKI,

Plaintiff,

-against-

ANSWER

07 Civ. 8555 (VM)

METRO-NORTH COMMUTER RAILROAD,

Defendant.

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Defendant, Metro-North Commuter Railroad, ("Metro-North"), by its attorney, Richard K. Bernard, General Counsel, as and for its answer to the complaint of the plaintiff, alleges as follows:

1. Defendant refers all questions of law and fact with respect to the allegations in paragraph(s) 1 to the judge and jury.
2. Admits the allegations contained in paragraph(s) 2 of the complaint.
3. Denies upon information and belief the truth of the allegations contained in paragraph(s) 3 of the complaint and refers all questions of law and fact to judge and jury, except admits that on and prior to October 6, 2004 the defendant Metro-North employed the plaintiff as a third railman.
4. Denies upon information and belief the truth of the allegations contained in paragraph(s) 4 of the complaint and refers all questions of law and fact to judge and jury.
5. Denies the allegations contained in paragraph(s) 5, 6 and 7 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. As and for an affirmative defense, or as a defense in mitigation of damages, the defendant claims that any injuries allegedly sustained by the plaintiffs were caused, in whole or in part, by reason of the culpable conduct of the plaintiffs.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. Defendant claims that plaintiff's complaint is barred by the applicable statute of limitations.

WHEREFORE, defendant demands judgment dismissing the complaint, together with costs and disbursements and such other and further relief as to this Court seems just and proper.

Dated: New York, New York
November 30, 2007

RICHARD K. BERNARD
GENERAL COUNSEL

By: S/
José R. Rios
Special Counsel
Attorneys for Defendant
347 Madison Avenue
New York, New York 10017
212-340-2537 - JRR/5785

TO: Marc Wietzke, Esq.
Law Offices of Michael Flynn, P.C.
Attorneys for Plaintiff
1205 Franklin Avenue
Garden City, NY 11530
516- 877-1234

STATE OF NEW YORK :
: ss
COUNTY OF NEW YORK:

LAURA MATTHEWS, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age and reside in the Bronx, New York.

On November 30, 2007, I served a true copy of the annexed ANSWER and Rule 7.1 Statement with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

TO: Marc Wietzke, Esq.
Law Offices of Michael Flynn, PC
Attorneys for Plaintiff
1205 Franklin Avenue
Garden City, NY 11530

S/
LAURA MATTHEWS

Sworn to before me this
30th day of November, 2007

S/
NOTARY PUBLIC